

ANTHONY J. COSTANTINI  
DIRECT DIAL: 212.692.1032  
PERSONAL FAX: 212.692.1020  
E-FAX: 212.202.4715  
E-MAIL: ajcostantini@duanemorris.com

www.duanemorris.com

December 19, 2011

**BY FACSIMILE (212) 805-6717**

The Honorable Richard M. Berman  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1320  
New York, New York 10007

SO ORDERED:

Date: 12/20/11

*Richard M. Berman*  
Richard M. Berman, U.S.D.J.

**MEMO ENDORSED**

USDC SDNY	DOCUMENT
ELECTRONICALLY FILED	
DOC #:	FIRM and AFFILIATE OFFICES
DATE FILED:	NEW YORK
	LONDON
	SINGAPORE 12/20/11
	PHILADELPHIA

CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SAN DIEGO  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY  
ATLANTA  
BALTIMORE  
WILMINGTON  
MIAMI  
PITTSBURGH  
NEWARK  
LAS VEGAS  
CHERRY HILL  
BOCA RATON  
LAKE TAHOE  
  
MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO

**Re: Stanley Madaloni v. Mada Design, Inc.,**  
**Civil Action No. 11 CIV 5086 (RMB) (DCF)**

Your Honor:

We are counsel to Stanley Madaloni, the plaintiff in this case and we are responding to our adversary's letter of even date. In July 2007, Mr. Madaloni entered into an Employment Agreement with Mada Design Inc., which, together with its "affiliates," is defined as the "Company" - the term used thereafter in the Agreement. Mr. Madaloni subsequently sued Mada Design Inc. for breach of that Employment Agreement.

In the course of this litigation, counsel for Mada Design informed Magistrate Judge Freeman via letter that Mada Design is considering filing for bankruptcy and/or dissolution. This communication, dated December 5, was Mr. Madaloni's first indication of how dire Mada Design's financial position had become since July of this year, when his contract was terminated. Consequently, we are seeking permission to add a Mada Design affiliate, Iverco Inc., as a defendant. The reason we did not do that earlier was there was no perceived necessity; the situation is now changed.

Since Iverco Inc. was the entity that purchased all the stock of Mada Design in 2007, it is definitely an "affiliate" within the terms of the Employment Agreement and thus can be sued for Mada's breach as a party to the Employment Agreement. Iverco existed prior to its acquisition of Mada Design in 2007, was operated as an independent business, and received considerable management fees from Mada over the last several years. It is thus believed that Mr. Madaloni

DUANE MORRIS LLP

1540 BROADWAY NEW YORK, NY 10036-4086  
DM113018854.1

PHONE: 212.692.1000 FAX: 212.692.1020

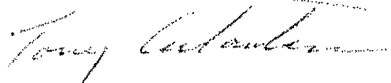
Duane Morris

The Honorable Richard M. Berman  
December 19, 2011  
Page 2

can collect a judgment against Iverco, if Mada goes into bankruptcy/dissolution. Consequently, we do not believe the claim to be "futile", notwithstanding the linguistic contortions in our adversary's letter.

The key question in the case is whether Mada Design can prove that Mr. Madaloni's discharge was "for cause," as Mada Design claims. Whatever records that exist to support this claim are available from Mada Design, and will be needed whether or not a bankruptcy/dissolution occurs. Further, the addition of Iverco should not impact discovery, as we have previously advised this Court.

Very truly yours,

  
Anthony J. Costantini

AJC/gg

cc: The Honorable Debra Freeman (via facsimile)  
Marc S. Wenger, Esq. (via e-mail)  
David R. Ehrlich, Esq. (via e-mail)  
Keith D. Greenberg, Esq.